

PUBLIC CONTRACTS REVIEW BOARD

Case 1474 – T039/20 – Provision of Maintenance and Support Services for HP Servers

The tender was published on the 13th May 2020 and the closing date of the tender was the 12th June 2020. The estimated value of the tender (exclusive of VAT) was € 140,000.

On the 6th July 2020 Forestals Information Technology Ltd filed an appeal against Malta Information Technology Agency as the Contracting Authority objecting to their disqualification on the grounds that their bid was not the cheapest technically compliant. A deposit of € 700 was paid.

There were two (2) bidders.

On 24th August 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Forestals Information Technology Ltd

Mr Alan Tabone	Representative
Mr Mario Sacco	Representative

Contracting Authority – Malta Information Technology Agency

Dr Danielle Vella	Legal Representative
Ms Karina Di Maggio	Chairperson Evaluation Committee
Mr Jean Aquilina	Member Evaluation Committee
Ms Jacqueline Ellul	Member Evaluation Committee
Mr Christopher Camilleri	Member Evaluation Committee
Mr Robert Grixti	Representative
Mr Ian Bonello	Representative

Preferred Bidder – Smart Technologies Ltd

Mr Ruben Caruana	Representative
------------------	----------------

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board. He then invited submissions.

Mr Mario Sacco Representative of Forestals Information Technology Ltd said that the preferred bidder was not a Hewlett Packard (HP) authorised partner and is only authorised to sell HP products but not to deliver support services on their behalf. There are only four companies registered to provide services and the preferred bidder is not one of them. Appellants are fully eligible to provide the service which includes the renewal of guarantees.

Dr Danielle Vella Legal Representative for Malta Information Technology Agency (MITA) said that both tenders submitted were administratively and technically compliant with the award going to the lower price offer. Clause 5 of the Instruction to tenderers specified that bidders had to provide a written attestation by the manufacturer confirming that the tenderer is authorised to provide the required services. The letters submitted by both bidders were similar stating that Appellants were service delivery partners and the preferred bidder service product providers. Clarification Note number 3 makes it clear that support can be provided locally and not necessarily through HP.

Mr Alan Tabone representative of Forestals Information Technology Ltd said that the tender specified that the provider has to be authorised by the manufacturer – there are four of these providers and the preferred bidder was not one of them.

Mr James Coleiro (515679M) called as a witness by the Public Contracts Review Board stated on oath that he is the Technical Services Manager of the Contracting Authority and was project manager on this tender. The tender requested written authority from the manufacturer that bidder could supply maintenance support services – there was no request for warranties. Both bidders submitted manufacturers' confirmation that they could supply the required services.

In reply to questions witness stated that the tender did not ask for delivery partners but merely that the bidders were authorised to provide the service. The letter provided by HP to the preferred bidder stated that they can provide the service and witness said that in the tender there is confirmation that service and parts can be provided. This is confirmed in a clarification note.

Dr Vella stated that there was similarity in the letters HP had sent to both bidders. This was an open tender and not restricted only to HP partners and the preferred bidders had indicated that they can provide the requested service.

Mr Tabone said that he disagrees that both partners can provide the service which the Authority was requiring.

The Chairman thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by Forestals Information Technology Ltd (hereinafter referred to as the Appellants) on 6th July 2020, refers to the claims made by the same Appellants with regard to the tender of reference T 039/20 listed as case No. 1474 in the records of the Public Contracts Review Board awarded by Malta Information Technology Agency (MITA) (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Mr Alan Tabone

Appearing for the Contracting Authority: Dr Danielle Vella

Appearing for the Preferred Bidder: Mr Ruben Caruana

Whereby, the Appellants claim that:

- a) Their main contention refers to the fact that, the preferred bidder is not a Hewlett Packard (HP) authorised partner and is only authorised to sell HP products but not to provide support and maintenance services.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 15th July 2020 and its verbal submissions during the virtual hearing held on 24th August 2020, in that:

- a) **The Authority contends that, the tender document stipulated that the bidder is authorised to provide the required services. In this regard, the preferred bidders provided such documentation so that, they were compliant with what had been requested.**
- b) **Through clarification note no. 3, the Authority informed all bidders that support services can be provided locally and not necessarily through the manufacturer (HP).**

This same Board also noted the testimony of the witness namely:

Mr James Coleiro duly summoned by the Public Contracts Review Board

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned opines that, the issue worthy of consideration is the stipulated requirement of the tender document.

1. **Appellants' main concern refers to the alleged claim that, the preferred bidder is not authorised by HP to provide the support services as duly requested in the tender document.**
2. **This Board would respectfully refer to article 5.1 (B) (C) of the 'Instructions to Tenders' wherein it is being stipulated the following:**

“(C) Technical and Professional Ability ^(Note 2)

(i) *Provide a written attestation by the manufacturer confirming that the Tenderer is authorised to provide the services. This attestation is to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. The attestation must be valid at least up to the validity period of the tender, or dated not earlier than the date of publication of the tender.*”

At the same instance, this Board would also refer to clarification note no. 1 providing amplification of the support services viz:

<i># Clarification Number</i>	<i>1</i>	<i>Date Published</i>	<i>15/05/20</i>
-------------------------------	----------	-----------------------	-----------------

<i>Title of Request</i>	<i>Clarification</i>
-------------------------	----------------------

Question

1) Can you confirm if MITA requires 24x7 Support to also be provided by the manufacturer apart from the contract only, this will ensure full manufacturer support to be proved should a case need to be escalated 2)Does MITA require proactive and advisory services to be provided directly by the manufacture through a dedicated account management team in order to provide best practice and recommendations in a ongoing proactive manner; apart from the contractor as well

Answer

- 1. The contractor would need to be in a position to provide 24x7 hardware maintenance and support adhering to the indicated service levels including the 24/7 replacement of parts whenever required. 2. No, there is no need.”*
- 3. The above-mentioned clarification note, which forms part of the tender document, confirms that the support services do not need to be provided by the manufacturer (HP) but can be provided locally.**
- 4. This Board has examined the evaluation report and notes that, the preferred bidder has submitted the necessary attestation from the manufacturer (HP) to be compliant with the tender requirements.**
- 5. This Board would also refer to the manufacturers’ (HP) letter dated 8th June 2020, wherein, HP are confirming that, the preferred bidder can deliver the goods and, at the same instance, impose no restrictions for the provision of local support services by the successful bidder. In this regard, this Board opines that, the preferred bidder is fully compliant.**

In conclusion, this Board opines that:

- a) The tender document, through the clarification note no.1, clearly states that, there is no need for the support services to be carried out by the manufacturer HP. Such services can be provided locally.**

- b) The preferred bidder's offer satisfied all the requirements as duly stipulated in the tender document.**
- c) The manufacturer's letter dated 8th June 2020 makes no restriction on the preferred bidders to deliver what was asked for, in the tender dossier.**
- d) The preferred bidder's offer was the cheapest yet fully compliant.**

In view of the above, this Board,

- i. Does not uphold Appellants' contentions**
- ii. Upholds the Contracting Authority's decision in the award of the tender**
- iii. Directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar
Chairman
31st August 2020

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member